



IDEM Permit Guide

Obtaining a Permit to Dredge or to Place Dredge or Fill Materials within Wetlands or Other Water Bodies

Who May Need a Dredging Permit

Dredging is done for one of four (4) reasons;

1. Mining
Dredging frequently is the technique used to recover sand and gravel from private mining pits as well as from the bottom of various waters of the state.
2. Construction
Such as dredging to clear away sediments and expose underlying bedrock to facilitate the construction of bridges, dams, docks, marinas, sea walls, or other structures, to install or repair utility lines that cross a river, or to obtain material for beach nourishment,
3. Maintenance
Such as dredging to maintain a navigation channel, to increase reservoir capacity for flood control or water supply, or to clear a water supply intake, or
4. Environmental remediation of contaminated sediments.

Note:

Persons intending to undertake any dredging operation in Indiana, or in waters adjacent to Indiana, should first consult with the U.S. Army Corps of Engineers (USACE), the Indiana Department of Natural Resources (DNR), and the Indiana Department of Environmental Management's (IDEM) Office of Water Quality and Office of Land Quality.

Such persons also are advised to request a multi-agency meeting with these regulatory authorities prior to engaging in any pre-dredging sediment testing activities.

This page is intended to be an overview of the dredging approval process, and to provide information on how to contact these agencies, and where to obtain other useful dredging-related documents.

Persons intending to undertake dredging activities or place dredge or fill materials into the waters of Indiana or the United States generally tend to think only of, and to initiate permit-related communications with, the U.S. Army Corps of Engineers (USACE). However, in reality dredging or fill activity could possibly require one or more permits or approvals issued by various state or local agencies, including DNR (Indiana Department of Natural Resources), or IDEM (Indiana Department of Environmental Management), as well as county departments of health. Certainly, these various agencies have overlapping concerns regarding the hydrological, environmental, or biological impacts of any dredge or fill activity. However, because they have differing jurisdictional and programmatic responsibilities, these agencies also are likely to have differing concerns, or at least differing emphasis, with respect to reviewing a dredge or fill permit application or approval request. As a result, persons seeking permits or approvals for dredge or fill activities are strongly encouraged to contact each agency early in the process.

Overview of Agencies With Authority Over Dredging Activities

Early communication can help ensure those seeking to undertake dredging activities that they will be obtaining the proper approvals, which could substantially reduce the potential for delay or frustration later in the process.

The agencies to contact include:

U.S. Army Corps of Engineers (USACE)

The U.S. Army Corps of Engineers (USACE) has jurisdiction over all navigable waters of the United States under section 10 of the Rivers and Harbors Act of 1899. It also regulates the placement of dredge or fill materials into the waters of the United States under Section 404 of the Clean Water Act. As a result, no person may deposit dredge or fill materials into the wetlands or waters of the U.S. without a permit from the USACE. However, the level of permitting required may vary.

The most extensive review process is for standard individual permits, which are also subject to public

<http://www.IN.gov/idem/guides/permit/water/dredgingpermits.html>

notice requirements, and can take three to six months to review. Other projects may qualify for abbreviated permit processing, with authorizations in the form of "Letters of Permission," in which a permit decision can usually be reached in less than 30 days. Letters of Permission are generally issued under Section 10 of the Rivers and Harbors Act. Coordination by the USACE includes providing copies of the proposed dredging plans to Indiana DNR and to adjacent property owners. There also exists categories of activities which have been previously authorized by the USACE under its "nationwide permits" program or by regional permits, and for which no further Corps approvals are required.

While the USACE may do an evaluation of the impacts a proposed dredging or fill project may have to the environment (for example, the USACE is interested in whether the dredge material is contaminated) and on wildlife, the impact a project will have on wetlands and navigability are primary criteria considered by the USACE during the permit review process. Will the activity increase or reduce the size of the wetland? Will it alter the current or depth of the stream? Will it impact the shoreline? Thus, the USACE can be expected to focus on the nature (granular structure -grain size of any sediments being placed in the navigable waters or in wetlands) and the volume of the material, as well as the location and area over which it is to be deposited.

Indiana Department of Natural Resources (DNR)

The Indiana Department of Natural Resources (DNR) , Division of Water is charged by the State of Indiana to maintain, regulate, collect data, and evaluate Indiana's surface and ground water resources. As a result, the Division of Water implements and enforces numerous statutes and rules which address dredging and fill placement, including those in the table below:

DNR Statutes Addressing Dredging and Fill Placement		
Statute	Statute Title	Related Administrative Code and Code Title
IC 14-26-2	IC 14-26-2 Lakes Preservation Act	312 IAC 11 - Public Freshwater Lakes
IC 14-26-5	IC 14-26-5 Lowering of Ten Acre Lakes Act	No related administrative code.
IC 14-28-1	IC 14-28-1 Flood Control Act	310 IAC 6-1 - Flood Hazard Areas
IC 14-29-1	IC 14-29-1 Navigable Waterways Act	312 IAC 6 - Navigable Waterways
IC 14-29-3	IC 14-29-3 Sand and Gravel Permits Act	312 IAC 6 - Navigable Waterways (same as above)
IC 14-29-4	IC 14-29-4 Construction of Channels Act	No related administrative code.

Like the USACE permitting programs which regulate dredging and fill operations, the statutes and rules regarding dredge and fill operations, which are implemented by the DNR Division of Water, also protect and maintain the physical structure and mechanics of those water bodies, such as surface elevation, depth, or volume of flow. However, various statutes and related rules require that DNR staff also consider other "natural resources" criteria when making a permitting decision including environmental impacts; the impacts on human health, fish, wildlife, botanical resources, natural scenic beauty; or the impact upon recreational purposes like fishing, boating, or swimming. For example, when reviewing dredging permit requests DNR would probably limit dredging activities during those time periods when it could potentially impact fish stocking or natural spawning and egg hatching cycles.

Indiana Department of Environmental Management (IDEM) also maintains approval authority with respect to some proposed dredge and fill projects.

IDEM Office of Water Quality (OWQ)

The IDEM Office of Water Quality (OWQ) is responsible for protecting the water quality of the waters of the state. The OWQ's primary interest in dredging projects is with regard to the impact dredging or filling material could have on overall water quality. Thus, all such projects which are issued an individual USACE permit also must obtain a 401 Water Quality Certification from OWQ. Similarly, Indiana has not approved all USACE Nationwide Permits, so persons intending to implement a project under the authority of one of the USACE Nationwide Permits also may be subject to obtaining a 401 Water Quality Certification. Unlike the USACE and DNR dredge or fill project approvals, which are evaluated primarily with respect to the impact on the physical characteristics and

Basic Requirement Criteria: 401 Water Quality Certifications
No individual Section 401 Water Quality Certification (WQC) from IDEM is required when:
(A) The project will impact 0.1 acre or less of wetlands, Special Aquatic Sites, or open water areas.
(B) The project will impact 300 linear feet or less of stream channel, excluding channel relocations.
All activities that exceed the above impact thresholds require an individual Section 401 WQC from IDEM.

biology of the lake or stream, IDEM 401 Water Quality Certifications focus primarily on how the activity would affect water quality.

IDEM Office of Land Quality (OLQ)

The IDEM Office of Land Quality (OLQ) is responsible for the safe reuse or disposal of solid and hazardous waste, including dredge material unsuitable for beach nourishment or other placement back into the waters of the state. The IDEM OLQ provides valuable assistance developing sediment sampling plans to ensure valid sediment testing results for those proposing dredging projects. Such plans may require pre-approval from the OLQ if the sediments to be dredged are:

- part of a RCRA (Resource Conservation and Recovery Act) remediation,
- the sampling plan is requested as part of an IDEM 401 Water Quality Certification, or
- if the dredging is to be carried out under an agreed order with IDEM as part of a remediation effort.

Nonetheless, all persons intending to place dredge or fill into the waters of Indiana or the U.S. are strongly advised to have a sediment sampling plan in place, and to have it reviewed by OLQ and the other agencies with jurisdiction (OWQ, DNR and USACE) prior to sampling. Although pre-approval is not required, applicants may be required to resample sediments if their sampling plan is found to be inadequate after the fact. Such resampling can be both expensive and time consuming.

In addition, any sediment which is determined to be a solid or hazardous waste, may not be placed back into the waters of Indiana or the U.S. Such sediments are instead subject to a waste determination to establish whether they should be disposed of as hazardous wastes, as industrial wastes, or designated by IDEM as suitable for beneficial reuse (including, but not limited to, use as aggregate in concrete or asphalt, as upland fill material, as landfill daily-cover, or some other approved reuse).

Such contaminated sediments must be placed upland. Applicants intending to construct a containment facility for the long term storage or permanent disposal of contaminated dredge materials also must obtain a permit from the IDEM OLQ for any such facility. Return runoff water from upland placement may be subject to NPDES (National Pollutant Discharge Elimination Systems) permitting requirements as well as 401 Water Quality Certification requirements.

If air stripping is required to treat return water by removing volatile contaminants prior to discharge, a permit from the IDEM Office of Air Quality (OAQ) also may be required. For more information on permits associated with air stripping treatment, contact the IDEM Office of Air Quality Permit Reviewer of the Day by phone at (317) 233-0178, using an online form, or by e-mail at OAMPROD@dem.state.in.us.

County Health Department

The County Health Department or local municipal health department also should be contacted by any persons who are proposing to use dredged material for beach nourishment. This is especially true when the fill material is sediment recovered from near a sewage treatment plant outfall. Although any, or all, of the agencies – IDEM, DNR, and the USACE – with primary jurisdiction over dredging projects may require, as part of the sediment testing plan, that such dredge material be tested for the presence of coliform bacteria and other human pathogens, local health department officials still should be kept apprised of test results

Regarding Sand and Gravel Quarries

Although dredging equipment and techniques may be used in the recovery of sand and gravel from or under the bed of Indiana streams and lakes, such activity is considered mining rather than dredging, and is permitted by the Indiana Department of Natural Resources (DNR) under IC 14-29-3, the Sand and Gravel Permits Act and IC 14-28-1, the Flood Control Act. Any discharge from such a facility also would require a NPDES (National Pollutant Discharge Elimination System) permit from the IDEM Office of Water Quality. The NPDES general Rule 12 permit (327 IAC 15-12) commonly is obtained for such operations.

Persons initiating entirely new mining operations in a previously unmined area are strongly encouraged to first contact the district office of the USACE for a determination regarding whether jurisdictional wetlands are involved. If a USACE permit is involved, a 401 Water Quality Certification from IDEM also could be required. In addition, all sand and gravel operators should remain mindful that, if the material recovered by a sand and gravel operation is contaminated, the operator of the permitted facility is responsible for

any remediation associated with that contaminated materials.

Who May Not Need a Permit, Certification, or Other Approval for Dredge or Fill Activities?

Private Ponds

Depending on varying conditions and requirements, dredging private ponds may, or may not, require any prior approval from the USACE, DNR, or the IDEM Office of Water Quality or Office of Land Quality. However, because approval requirements can vary substantial with individual circumstances, such determinations are made on a case-by-case basis. Therefore, it is always advisable to contact each of the regulating agencies prior to any dredging, even in a private pond.

Similarly, the dredging of sedimentation basins constructed specifically as pollution control devices may, or may not, require regulatory approval and so each of the regulatory agencies should be consulted. In particular, the IDEM Office of Land Quality should be contacted regarding any dredged materials which could be contaminated. In addition, any water discharges from such ponds or facilities to the waters of the state continue to be subject to NPDES (National Pollutant Discharge Elimination System) permitting requirements.

Some of the Things a Person must Do to Obtain a Dredging Permit Include:

Since any dredge or fill activities could require the approval of multiple permitting authorities, persons proposing such activities should be sure to contact each agency in advance to determine if a permit or other approval is required for the proposed activity.

Agencies which should be contacted include:

The U.S. Army Corps of Engineers

Louisville

Phone: 502/315-6733

Jurisdiction includes the southern three-quarters of Indiana, where streams ultimately flow south into the Ohio River basin.

Detroit

Phone: 219/232-1952 (South Bend Field Office)

Jurisdiction includes the northern quarter of Indiana, including the Iroquois and Kankakee Rivers, in the Ohio River basin, as well as streams such as the Grand Calumet, Little Calumet, and Maumee which flow into the Great Lakes.

DNR (The Indiana Department of Natural Resources) Division of Water

Phone: 1-317/232-4160, or for Indiana residents only, 1-877-928-3755

IDEM

Persons proposing dredging projects should contact:

Steve West

Sediment Remediation Program Coordinator

Phone: 317/233-8905, or toll-free (for Indiana residents only) 1-800-451-6027, extension 3-8905.

E-mail: swest@dem.state.in.us

Persons seeking a Section 401 Water Quality Certification should contact:

Indiana Department of Environmental Management

Office of Water Quality

Section 401 Water Quality Certification Program

P.O. Box 6015

Indianapolis, Indiana 46206-6015

FAX: 317/232-8406

Phone: 317/233-8488

Local County Health Departments or municipal health departments may need to be notified (especially if dredged material is being proposed for use as beach nourishment).

Sediment Testing, and Sample Collection Methods

Any uncontaminated sediments generated from construction or maintenance dredging can be disposed of back in water. However, the proper permit(s) -- which will dictate where the material is to be re-deposited into the water-- must first be obtained. Although, sediment testing plans for construction or maintenance dredging are not required to be pre-approved, retesting can be required in some instances. As a result, all persons intending to dredge are encouraged to request a multi-agency pre-sampling meeting, or to have their sampling plans reviewed by each agency before hand.

Persons proposing to place dredge or fill materials into the Great Lakes

Persons proposing to place dredge or fill materials into the Great Lakes or any connecting channels or tributaries will want to refer to the Great Lakes Dredged Material Testing & Evaluation Manual, in consultation with the USACE, and with Indiana DNR and IDEM. The manual was developed by the U.S. EPA and the USACE. Those agencies also collaborated to create the Inland Testing Manual for "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.," which provides guidance for sediment dredge or fill testing in Indiana waters outside the Great Lakes drainage basin.

Although IDEM has not yet evaluated these two USACE testing manuals, the IDEM Office of Land Quality has prepared Guidance to the Performance and Presentation of Analytical Chemistry Data. It should be used in conjunction with the aforementioned USACE testing manuals to help ensure that testing efforts will generate valid analytical data that will meet the data quality objectives required for properly evaluating a dredge and fill approval request.

The sampling plan should address sampling frequency, identify what is to be sampled for, and establish a protocol for how samples are to be collected. Although some level of sediment testing will always be appropriate, the site history can provide useful information for establishing a testing plan.

- Where is the site?
- When was it last dredged?
- What types of constituents or contaminants were found at that time?
- What are some nearby industrial activities? What types of out falls, or discharge points, are present, and what types of potential contaminants are contained within those discharges?
- What types of cargo have been shipped in the vicinity?
- All these bits of site history can help to determine the type of testing that may be required.

Any sediments determined to be contaminated, that is, sediments that contain metals or certain organic compounds above acceptable limits, must be treated as solid waste. Such sediments may not be discharged back into the water. (NOTE: Organic chemicals require a more complex evaluation because some organic compounds are naturally occurring.) Contaminated sediments must be subjected to a waste determination to identify whether they are hazardous waste, or industrial waste. Industrial waste may either be disposed of as solid waste or designated by the IDEM Office of Land Quality as suitable for beneficial reuse.

Persons Seeking a Permit to Dredge Contaminated Sediments

Persons seeking to dredge sediments as part of a remedial action are encouraged to contact:

Steve West
Sediment Remediation Program Coordinator
Phone: 317/233-8905, or toll-free (for Indiana residents only) 1-800-451-6027, extension 3-8905
E-mail: swest@dem.state.in.us

Such persons also should anticipate they will be required to perform and to submit the results of sediment testing prior to obtaining a permit. Dredging for remediation also requires a more extensive public process than dredging for maintenance.

As mentioned previously, the various agencies with permitting or approval authority do have overlapping jurisdictions and concerns. However, each agency also has slightly differing responsibilities; protecting the physical nature of the water body, protecting the fish and wildlife, protecting the quality of the water itself, or looking at dredged sediments from the perspective of waste disposal requirements. Therefore,

each agency may be looking for different data from the sampling results.

As a result, persons intending to dredge contaminated sediments are urged to contact each of the agencies with jurisdiction over dredging and fill placement, and to consider requesting a multi-agency pre-sampling meeting to ensure that all the various programmatic goals of the various agencies will be included in their quality assurance plan and a sediment sample analysis plans prior to any sampling. Such multi-agency meetings and the completion of an IDEM-approved sampling plan will not guarantee that there will not be a need for additional testing, once initial test results become available. However, the absence of an approved sampling plan or the lack of adequate communication with each of the various permitting authorities could certainly lead to additional testing and associated expenses as well as a delay of the final permit approval.

What to Expect

In nearly all instances, the placement of dredge or fill into the waters of Indiana or the U.S. requires one or more permits.

Clean sediments may only be re-deposited in the water with the written permission of the USACE and DNR. Sediments with the proper characteristics may be used as beach nourishment, pending the approval of the USACE (which will be interested in the grain size of the material) and the county or municipal department of health (which will be concerned that the material is free of any human pathogens). Beach nourishment generally is deposited near the shoreline, in water less than 20 feet deep. Otherwise, uncontaminated dredge material not suitable for beach nourishment could possibly, if it is within the Great Lakes, be deposited in open water that is 30 feet deep, or deeper.

Again, sediment that is being dredged as part of a remediation effort, or any sediments determined to be contaminated, are considered as solid waste, and may not be redeposited within a water body, but must be deposited upland. The return water from such upland dredge placement may require a separate NPDES (National Pollutant Discharge Elimination System) permit. Contaminated sediment are subject to a TCLP (Toxicity Characteristic Leaching Procedure) test to determine whether they are hazardous. They may then be designated for beneficial reuse, or disposed of in the appropriate class of landfill (depending on the level of contamination).

The U.S. Army Corps of Engineers (USACE) usually can process a standard individual permit request within 60 to 120 days. Requests to complete an activity under one of the USACE's approximately 40 different Nationwide Permits are generally processed in about 30 days. There is no public notice period for a single Nationwide Permit, because the opportunity for public comment occurs every five years when the Nationwide Permits are reauthorized. The public notice period for standard individual permits is generally 20 days, but can be as short as 15 days or as long as 30 days, depending on the level of complexity of the proposed project. A permit fee of \$100 for commercial projects or \$10 for non-commercial projects is collected upon issuance of the standard individual permit. Public hearings are uncommon, but may be held if the USACE feels it needs additional information prior to making a permitting decision. During the public comment period, comments are accepted regarding impacts to the water body, as well as impact to endangered species and historic properties.

- Indiana DNR permits generally are processed in about 90 days, for a cost of \$50. The public notice period is generally 30 days, during which comments are accepted about impacts to waterways or wildlife. The applicant must notify contiguous land owners, while DNR notifies everyone on its weekly mailing list. Notice also is viewable from the DNR Internet website. A public hearing for the sole purpose of receiving public comment may be requested at any time before a permitting decision is final, and must be held upon receipt of a petition of 25 persons. All hearings are held in Marion County, unless otherwise requested.
- The IDEM Office of Water Quality 401 Water Quality Certification Section provides a 21 day public notice upon the receipt of a complete application. Reviews of complete applications typically are completed within 60 days. The agency may hold a public hearing under certain circumstances. No fee is assessed.
- The IDEM Office of Land Quality reviews sediment testing plans or makes disposal recommendations for contaminated sediments. However, OLQ does not issue any dredging-related permits, so there are no applications or fees. Review of sediment testing plans usually

takes from 20 to 30 days, while waste determinations for disposal of contaminated sediments can take up to 30 additional days.

To Appeal Dredging Permit Decisions

(Most dredging-related permitting decisions are appealable.)

Appealing 401 Water Quality Certifications

The Water Quality Certifications issued by the IDEM Office of Water Management may be appealed to the Indiana Office of Environmental Adjudication within 18 days of issuance. Anyone seeking a hearing from an Environmental Law Judge (ELJ) on any 401 WQC decision must

1. identify the person or persons making the review request,
2. identify their interests with respect to the decision,
3. state the reasons for the review request,
4. state the issues proposed for consideration at any hearing on the matter, and
5. identify the terms and conditions that, in the judgment of the person making the review request, would be appropriate to satisfy the requirements of law governing the decision in question.

Within 30 days of the review request (appeal), the ELJ will determine if the request was properly submitted and establishes a jurisdictional basis for a hearing. At that time the ELJ may stay (postpone, delay, or stop the effect of) the decision. A final order may be issued after the hearing. Decisions of the ELJ may themselves be subject to judicial review.

Appealing Dredging Permits Issued by DNR

The process for seeking administrative appeal of permits issued by DNR is outlined under 312 IAC 3. Persons seeking administrative appeal of a DNR permitting decision must submit a request to:

Division of Hearings,
Indiana Government Center-South,
402 West Washington Street,
Room W272,
Indianapolis, Indiana, 46204.

As outlined under IC 4-21.5-3-7 ("Administrative Orders and Procedures") petitions for review must be submitted with 18 days (15 days, plus 3 days for mailing) of notice by DNR of the permitting decision. In the presence of an Administrative Law Judge, the petitioner must successfully demonstrate that they are aggrieved or adversely affected and that they are entitled to a review under law. They also must explain why they believe the permitting decision was in error, and list the statutes or rules that support their contention. DNR's position will be supported by the agency's legal staff.

Appealing Dredging Permits Issued by USACE (U.S. Army Corps of Engineers)

A district engineer's decision on a permit denial or a declined standard individual permit for a dredging or fill project is subject to an administrative appeal by the affected party in accordance with the procedures and authorities contained in 33 CFR Part 331. Only applicants maintain appeal rights. "Third parties" (other members of the public) cannot appeal a permit issued by the USACE. Third parties are considered to have had the opportunity to express support, opposition or concern to any such projects during the 30-day public comment period following the public notice of the permitting application request.

Applicants may appeal standard individual permits which are denied with prejudice and standard individual permit conditions which the applicant believes are too onerous. Applicants are notified in writing of a Corps decision on an appealable action. For permit denials, applicants are provided a copy of the decision document for the permit application, a Notification of Appeal Process (NAP) fact sheet that explains the criteria and procedures of the administrative appeal process, and a Request for Appeal (RFA) form. The RFA must be submitted within 60 days of the date of the NAP. The administrative appeal process for permit denials and declined individual permits is a one level appeal.

The appeal process will normally be conducted by the Review Officer (RO) whose task it is to assist the division engineer or higher authority responsible for rendering the final decision on the merits of an appeal. The RO conducts an independent review of the administrative record to verify that it provides an

adequate and reasonable basis supporting the district engineer's decision, that facts or analysis essential to the district engineer's decision have not been omitted from the administrative record, and that all relevant requirements of law, regulations, and officially promulgated Corps policy guidance have been satisfied. The division engineer will make a final decision on the merits of the appeal within 90 days of the receipt of a complete RFA.

As final recourse to third parties, if they can successfully demonstrate to the USACE that a project should not have been approved because of 1) a substantive environmental concerns or an overriding public interest or concern that was not addressed in the initial evaluation of the permitting request or that 2) there were substantial procedural short comings in the USACE's evaluation process, they may request a review by the USACE. The USACE district engineer may sometimes suspend a permit pending such a review. In turn, such a review could lead to the modification, suspension, or revocation of a permit. However, absent such concurrence by the USACE district engineer, the only other recourse available to third parties opposed to USACE permitting decisions is to take USACE, or the applicant, to civil court.

For Additional Information

To obtain additional information regarding dredging activities and permits please contact one, or more, of the following:

U.S. Army Corps of Engineers (USACE)

- The U.S. Army Corp of Engineers Louisville District Office
Phone: 502/582-5607
- The U.S. Army Corp of Engineers Detroit District Office
Phone: 313/226-6828 or 313/226-6812.
- The U.S. Army Corp of Engineers Detroit District, South Bend Field Office
Phone: 219/232-1952.
Indiana Department of Natural Resources
Division of Water
Phone: 317/232-4160 (or 1-877-928-3755 for Indiana residents only).

Indiana Department of Environmental Management (IDEM)

Steve West
Sediment Remediation Program Coordinator
Indiana Department of Environmental Management
Phone: 317/233-8905 (or at 1-800-451-6027, extension 3-8905, for Indiana residents only)
E-mail: swest@dem.state.in.us

Disclaimer

This permit guide is intended to provide background information which should be useful in planning for a particular project that may require an environmental permit. It does not substitute for consultation with the appropriate regulatory agency and/or the appropriate rules or statute.